

**SAN FRANCISCO BAY CONSERVATION  
AND DEVELOPMENT COMMISSION**

**NOTICE OF PROPOSED RULEMAKING  
TO  
AMEND SECTIONS 11386 AND 11303**

**Time, Place, and Nature of Proceedings:** The Commission will hold a public hearing on this matter on November 21, 2002 at the Metro Center in the City of Oakland beginning at 1:00 p.m.. The Commission will discuss proposed changes to Section 11386 of Article 2, Subchapter 2, Chapter 13, Division 5 of Title 14 of the California Code of Regulations regarding standardized fines and Section 11303 of Article 2, Subchapter 2, Chapter 13, Division 5 of Title 14 of the California Code of Regulations regarding the Commission's ability to refer violations to the Attorney General's Office.

**Authority and Reference:** For the proposed changes to Section 11386:

**Authority:** Section 66632(f), Government Code; and Section 29201(e), Public Resources Code.

**Reference:** Sections 66632(f) and 66641.5, Government Code; and Sections 29201(e) and 29610, Public Resources Code.

For the proposed changes to Section 11303:

**Authority:** Section 66632(f), Government Code; and Section 29201(e), Public Resources Code.

**Reference:** Section 66641(d), Government Code; and Section 29601, Public Resources Code.

**Informative Digest/Policy Statement Overview:** Currently, Section 11386 of the Commission's regulations allows an alleged violator to resolve the civil penalty portion of certain alleged violations by paying preset standardized fines without having to go through a formal enforcement proceeding. The proposed changes to Section 11386 would do the following: (1) double fines for violators who have paid a standardized civil penalty within the previous five years; (2) create an immediate per diem penalty schedule for violations that had previously been corrected within the existing 35-day "grace" period; (3) rationalize the standardized fine amounts by increasing those associated with activities that cannot be approved and decreasing those associated with activities that can be approved; (4) make all existing per diem fine amounts equal; (5) clarify the existing threshold determinations made by the Executive Director as to when the standardized process is appropriate; (6) allow the Executive Director to terminate the opportunity to use standardized fines after thirty-five days of providing notice; (7) set a standard limit of one hundred and twenty-five days for resolving violations through standardized fines; (8) include violations of any permit condition within the standardized penalty structure;

(9) clarify the process for appealing both the time limit for resolution and the standardized penalty amount; (10) specifically delineate an alleged violator's right to a formal enforcement hearing; and (11) clarify some of the existing language. The goal of these amendments is to make the application of the standardized fines more streamlined, internally consistent, and equitable.

Currently, Section 11303 describes when violations can be referred to the Attorney General's Office. The proposed changes to Section 11303 would allow the Executive Director to include all outstanding violations, including those enumerated under the standardized fine section, as part of a referral to the Attorney General's Office.

**Mandate on Local Agency or School District:** None.

**Cost or Savings to Local Agencies or School Districts:** None.

**Other Nondiscretionary Costs or Savings Imposed upon Local Agencies:** None.

**Cost or Savings to State Agencies or Federal Funding to the State:** None.

**Significant Effect on Housing Costs:** None.

**Significant Statewide Adverse Economic Effect on Businesses, including the Ability of California Businesses to Compete with Businesses in Other States:** None. The proposed amendments to Section 11386 clarify existing procedures, allow alleged violators additional opportunities to settle the civil penalty portion of their alleged violations if they choose to do so, and change some of the existing penalty amounts. The proposed amendment to Section 11303 clarifies when cases may be referred to the Attorney General. The proposed amendments do not create any new policy or impose any new requirement on business.

**Creation or Elimination of Jobs or Business, or Expansion of Business, in California:** The Commission has made a determination that the proposed regulations would not (1) create or eliminate jobs within California, (2) create new businesses or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

**Business Reporting Requirements:** None.

**Cost Impact on Representative Private Persons or Directly Affected Businesses:** The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Effect on Small Business:** Because the proposed changes affect only fines for non-compliance with existing Commission laws and policies, no cost or benefit to small business related to compliance is involved.

**No More Effective Alternative:** In accordance with Government Code Section 11346.5(a)(12), the Commission must determine that no alternative considered by it would be more effective in

carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**Contact Person and Backup:** Inquiries and substantive questions should be directed to Allen Brooks, Coastal Program Analyst, San Francisco Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111; (415) 352-3624; alb@bcdc.ca.gov. If Mr. Brooks is unavailable, comments should be directed to Jonathan Smith at (415) 352-3655 or jons@bcdc.ca.gov.

**Availability of Text of Proposed Changes and Initial Statement of Reasons:** The text of the proposed changes and an initial statement of reasons explaining the need for the changes are available for review at the Commission's office. Copies of the text and initial statement of reasons can be obtained by contacting Mr. Brooks (see Contact Person above). These items are also available on the Commission's website at [www.bcdc.ca.gov](http://www.bcdc.ca.gov).

**Written Comment Period:** Written comments submitted in advance of the public hearing on this matter should be directed to Allen Brooks at the Commission's office (see Contact Person above) and must be received no later than Wednesday, November 20, 2002, at 5:00 p.m.. Written comments will also be accepted on Thursday November 21, 2002, during the public hearing on this matter at the time and place listed above. The Commission may close the public comment period at the close of the public hearing on November 21, 2002.

**Availability of Modified Text:** The full text of any changes to the proposed text shall be made available to the public at least 15 days prior to the date on which the Commission determines whether to adopt the modified text. The Commission will accept written comments on the modifications for 15 days after the modifications are made available.

**Rulemaking File:** A rulemaking file for this rulemaking activity is maintained at the Commission's office and is available for public review during the Commission's normal business hours (Monday through Friday, 9:00 a.m. to 5:00 p.m.). Requests to review the rulemaking file should be directed to Mr. Brooks (see Contact Person above.)

**Final Statement of Reasons:** Once prepared, the final statement of reasons will be available as part of the Commission's rulemaking file described above.

**Internet Access:** The proposed regulation and related documents will be available for review on the Commission's website at [www.bcdc.ca.gov](http://www.bcdc.ca.gov).